

CHARLES E. BEAN

IBLA 80-771

Decided May 23, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 120182 through N MC 120229.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

The conclusive presumption of abandonment which attends the failure to file an

instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or to afford claimants any relief from the statutory consequences.

APPEARANCES: Robert J. Wright, Esq., Noti, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Charles E. Bean has appealed the Nevada State Office, Bureau of Land Management (BLM), decision Mineral Extraction Corp., of June 16, 1980, which declared the unpatented Sunrise Nos. 1 through 9; Iron Mask Nos. 1 through 10; Harry Wheeler Nos. 1, 2, and 3; Dilly Nos. 1 and 2; Red Top Nos. 1 and 2; Butch Nos. 1 and 2; Blue Rock; Bluetop No. 2; Pati; Alice; Hilltop Nos. 1 through 10; and Superior Nos. 1 through 6 lode mining claims, N MC 120182 through N MC 120229, abandoned and void because no proof of labor was filed with BLM on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. 1/

Appellant states the mining claims are property of the Evangelical Oregon Trust, and he is the trustee of the trust. Appellant asserts the required assessment work on the claims was waived by the United States Government, and that the claims are before the United States Court of Claims in litigation styled Wright v. United States, No. 97-79C. Appellant argues that as the matter will be fully adjudicated by the Court of Claims, the Department of the Interior is without jurisdiction. Appellant states that the notices of location were recorded with BLM in the name of Minerals Extraction Corporation because BLM would not recognize ownership of the claims by the Evangelical Oregon Trust. Appellant argues that the filing fee for recordation of the claims should be refunded as the fees were waived by a "direct agent" of the President of the United States.

In an opinion filed May 2, 1983, the United States Court of Claims dismissed the complaint in Wright v. United States, entertaining the Government's motion for summary dismissal.

1/ We note that a notice of appeal of the BLM decision was also filed by Michael J. Bird, Esq., on behalf of Minerals Extraction Corporation. No statement of reasons was included with that appeal nor has one been subsequently filed. Failure to file a statement of reasons subjects the appeal to summary dismissal. 43 CFR 4.412(c). The appeal of Minerals Extraction Corporation is dismissed.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located on or before October 21, 1976, must file a copy of the official record of the location notice and a notice of intention to hold the claim or evidence of the performance of assessment work on the claim in the proper office of BLM on or before October 22, 1979, and on or before December 30 of every calendar year thereafter. This statutory requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1981). The responsibility for complying with the recordation requirements rested with appellant. Those who deal with the Government are presumed to have knowledge of the law and regulations duly promulgated thereto. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, *supra*.

As no proof of labor or notice of intention to hold the claims was filed with BLM on or before October 22, 1979, the action by BLM to consider the claims abandoned and void was proper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge

